

## OACDL GENERAL RECOMMENDATIONS:

### **RULE 46. Bail Pretrial Release and Detention** **(OACDL recommendations in blue)**

**(A) Pretrial detention.** A prosecutor may file a motion seeking pretrial detention of a defendant pursuant to the standards and procedures set forth in the Revised Code.

- ***OACDL: This paragraph should be modified to provide that the State's motion should be a fact specific motion in conformance with Crim R. 12 and specifically address factors enumerated in paragraph D below. This should also be subject to a hearing.***

**(B) Types and amounts of bail.** Any person who is entitled to release shall be released upon one or more of the following types of bail in the amount set by the court:

- (1) The personal recognizance of the accused or an unsecured bail bond;
- (2) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;
- (3) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.

Unless the court orders the defendant detained under division (A) of this rule, the court shall release the defendant on the least restrictive conditions that, in the judgment of the court, will reasonably ensure the defendant's appearance in court, the protection of the safety of any person or the community, and that the defendant will not obstruct the criminal justice process. If the court orders monetary conditions of release, the court shall impose an amount and type which are least costly to the defendant while also sufficient to reasonably ensure the defendant's future appearance in court.

- ***OACDL: This paragraph should be modified to provide for a presumption for release on offenders on low tier F3s and lower offenses. This paragraph should also be modified to provide for a consideration of ability to pay in the last sentence.***
- ***OACDL: Upon request of either party the court shall conduct a hearing on Bail.***

~~(B)~~**(C) Conditions of bail.** The court may impose any of the following conditions of bail:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise the person;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) Place the person under a house arrest, electronic monitoring, or work release program;
- (4) Regulate or prohibit the person's contact with the victim;

(5) Regulate the person's contact with witnesses or others associated with the case upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate those persons;

~~(6) Require a person who is charged with an offense that is alcohol or drug related, and who appears to need treatment, to attend treatment while on bail completion of a drug and/or alcohol assessment and compliance with treatment recommendations, for any person charged with an offense that is alcohol or drug related, or where alcohol or drug influence or addiction appears to be a contributing factor in the offense, and who appears based upon an evaluation, prior treatment history, or recent alcohol or drug use, to be in need of treatment;~~

(7) Require compliance with alternatives to pretrial detention, including but not limited to diversion programs, day reporting, or comparable alternatives, to ensure the person's appearance at future court proceedings;

(8) Any other constitutional condition considered reasonably necessary to ensure appearance or public safety.

~~(C)~~**(D) Factors.** In determining the types, amounts, and conditions of bail, the court shall consider all relevant information, including but not limited to:

(1) The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;

(2) The weight of the evidence against the defendant;

(3) The confirmation of the defendant's identity;

(4) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;

(5) Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order;

(6) An evaluation of the defendant's likelihood of appearance and risk to public safety, as determined by an objective risk-assessment tool recognized as reliable by statute or by the court, when reasonably available to the court. As soon as possible without causing unreasonable delay to the court's bail determination, this risk-assessment tool shall be employed by the court on its own initiative for any defendant not yet released on bail, either before or after the defendant's initial appearance.

- *OACDL: This paragraph should be modified to remove “by statute”. This paragraph should consider enumerating a specific risk assessment tool or one approved by the OSCt that minimizes the defendant’s involvement and waiver and expedites potential release. This paragraph should consider when and who does the risk assessment.*

~~(D)~~**(E) Appearance pursuant to summons.** When summons has been issued and the defendant has appeared pursuant to the summons, absent good cause, a recognizance bond shall be the preferred type of bail.

~~(E)~~**(F) Amendments Continuation of Bail.** A court, at any time, may order additional or different types, amounts, or conditions of bail. Unless otherwise ordered by the court pursuant to this subsection, bail shall continue until the return of a verdict or the entry of a guilty plea, and may continue thereafter pending sentence or disposition of the case on review. At any time, a court may eliminate or lessen any condition of bail that the court believes is no longer necessary to reasonably ensure the defendant’s appearance in court, the protection of the safety of any person or the community, and that the defendant will not obstruct the criminal justice process.

~~(F)~~**(G) Information need not be admissible.** Information stated in or offered in connection with any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law. Statements or admissions of the defendant made at a bail proceeding or in the course of compliance with a condition of bail shall not be received as substantive evidence in the trial of the case.

- *OACDL: This paragraph should be modified to remove the word “substantive” in the last sentence.*

~~(G)~~**(H) Bond schedule.**

(1) In order to expedite the prompt release of a defendant prior to initial appearance, Each each court shall establish a bail bond schedule covering all misdemeanors including traffic offenses, either specifically, by type, by potential penalty, or by some other reasonable method of classification. The court also may include requirements for release in consideration of divisions ~~(B)~~ (C) and ~~(C)~~(5) (D)(5) of this rule. The sole purpose of a bail schedule is to allow for the consideration of release prior to the defendant’s initial appearance.

(2) A bond schedule shall not be considered as “relevant information” under division (D) of this rule.

(3) When a person fails to post a bond established by a bail bond schedule, a judicial officer shall conduct a bail hearing no later than the second court day after that person has been arrested.

(4) Each municipal or county court shall, by rule, establish a method whereby a person may make bail by use of a credit card. No credit card transaction shall be permitted when a service charge is made against the court or clerk unless allowed by law.

(5) Each court shall review its bail bond schedule bi-annually by January 31 of each even numbered year, to ensure an appropriate bail bond schedule that does not result in the unnecessary detention of defendants due to inability to pay.

~~(H) Continuation of bonds. Unless otherwise ordered by the court pursuant to division (E) of this rule, or if application is made by the surety for discharge, the same bond shall continue until the return of a verdict or the acceptance of a guilty plea. In the discretion of the court, the same bond may also continue pending sentence or disposition of the case on review. Any provision of a bond or similar instrument that is contrary to this rule is void.~~

(I) **Failure to appear; breach of conditions.** Any person who fails to appear before any court as required is subject to the punishment provided by the law, and any bail given for the person's release may be forfeited. If there is a breach of condition of bail, the court may amend the bail.

(J) **Justification of sureties.** Every surety, except a corporate surety licensed as provided by law, shall justify by affidavit, and may be required to describe in the affidavit, the property that the surety proposes as security and the encumbrances on it, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged, and all of the surety's other liabilities. The surety shall provide other evidence of financial responsibility as the court or clerk may require. No bail bond shall be approved unless the surety or sureties appear, in the opinion of the court or clerk, to be financially responsible in at least the amount of the bond. No licensed attorney at law shall be a surety.